No. 49324-1-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

CHARLES and CAROL PARSONS,

Respondents,

v.

JOHN PAUL MIERZ,

Appellant.

REPLY BRIEF OF APPELLANT

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I. ARGUMENT

A. Respondent's Brief Mischaracterizes the Trial Court's Findings of Fact and Introduces Factual Assertions Unsupported by the Record.

A finding of fact is a determination of what happened or what was said without any statement as to the legal effect of the event or statement. *Leschi Imp. Counsel v. Wash. State Highway Comm'n*, 84 Wn.2d 271, 284, 525 P.2d 774 (1974). Unchallenged findings of fact are verities upon appeal. RAP 10.3(g); *Moreman v. Butcher*, 126 Wn.2d 36, 39, 891 P.2d 725 (1995).

In an attempt to contort Appellant's rental of a portion of real property into a tenancy covered by the Residential Landlord-Tenant Act (RLTA), the Respondent's brief repeatedly claims that Appellant's recreational vehicle was "semi-permanently" installed upon Space 9, and therefore can be construed as a "dwelling unit" because it is "a part" of Respondent's real property. *Brief of Respondent*, at 7-9. Yet the Respondent fails to provide a single citation to any finding made by the trial court—or anywhere else in the record before this Court—to support Respondent's factual claims that Appellant's recreational vehicle was "a part" of the real property owned by the Respondent.

A review of the trial court's findings shows Respondent's assertion that Appellant's recreational vehicle was "semi-permanently" affixed to Space 9 is incorrect, and directly at odds with the trial court's findings. Concerning the manner in which Appellant's recreational vehicle was placed on Space 9, the trial court found:

> There is *nothing permanent* about a plug-in for electric, a spigot for water connection, and a drop-in flex hose for sewage connection whether or not the hose is contained in a PVC pipe. *These facts do not convert the defendant's motorhome into a permanent structure.* The defendant's motorhome was designed and built to be mobile.

See CP 19 (emphasis added). In addition, the trial court found, "the motorhome can be removed at any time." CP 18.

In sum, the trial court declined applying the protections of the Manufactured/Mobile Home Landlord Tenant Act (MHLTA) by finding that Appellant's recreational vehicle was not attached to Space 9 in any significant way. There is no support in the factual findings for Respondent's assertion—raised for the first time—that Appellant's recreational vehicle was "semi-permanently" connected to Space 9.[1]

[1] The trial court's findings were drafted by Respondent's counsel. Had the trial court genuinely found that Appellant's recreational vehicle was "semi-

Since there was "nothing permanent" in how Appellant's recreational vehicle was parked on Space 9, and the recreational vehicle could "be removed at any time," there is no basis in the record for Respondent to now assert that Appellant's recreational vehicle was somehow "semi-permanently" connected to—and therefore "a part" of—Respondent's real property.

In this case, the sole issue before this Court is whether the trial court erred in awarding attorney fees under the RLTA. Neither the Appellant nor the Respondent has contested the factual findings entered by the trial court in this case. Therefore, this Court cannot now consider new factual assertions made by the Respondent that are not contained in, or supported by, the record developed at trial.

II. CONCLUSION

Apart from noting that Respondent cannot now introduce factual assertions unsupported by the findings, Appellant rests on the arguments presented in its opening brief. Appellant rented a portion of real property from Respondent upon which Appellant parked his recreational vehicle. While Appellant's rental of a portion of real property from Respondent

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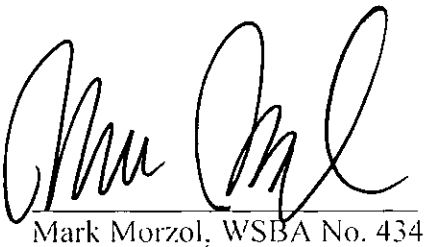
permanently" installed on Space 9, Respondent's counsel should have included that language in the findings.

created a tenancy, it did not create a tenancy covered under the definitions of the Residential Landlord-Tenant Act (RLTA). Since the RLTA does not apply to Appellant's tenancy, the trial court's award of attorney fees under the RLTA was error.

The Appellant respectfully asks this Court to reverse the award of attorney fees and remand for entry of a judgment consistent with the reversal.

Respectfully submitted this 24th day of April, 2017.



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COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON	
CHARLES and CAROL PARSONS. Respondents vs. JOHN PAUL MIERZ. Appellant	NO. 49324-1-II **RETURN OF SERVICE**

1. My name is Stormie Redden, I am over the age of 18 years, and I am not a party to this action.

2. I served the following documents to Shannon Jones. Attorney for Respondents

REPLY BRIEF OF APPELLANT

3. I served these documents on April 24. 2017 at 12:06 pm at this address.

317 South meridian
Puyallup, WA 98371

4. Service was made by delivery to the office of Campbell. Dille. Barnett and Smith P.L.L.C. to Taylor Davis.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED 24th Day of April. 2017. Tacoma Washington.

Stormie Redden
Stormie Redden